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10/591,502

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EXAMINER

LYONS, MICHAEL A

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/591,502
Filing Date: August 20, 2007
Appellant(s): DRABAREK, PAWEL

Clifford A. Ulrich
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 2, 2010 appealing from the Office action mailed September 11, 2009.

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(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 8-13 are rejected and pending.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN

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REJECTIONS.” New grounds of rejection (if any) are provided under the subheading “NEW GROUNDS OF REJECTION.”

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant’s brief.

(8) Evidence Relied Upon

6,901,176 BALACHANDRAN et al 5-2005

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balachandran et al (US 6,901,176), hereinafter Balachandran.

Regarding claim 8, Balachandran (Fig. 3) discloses an interferometric measuring system comprising a transmitting element including a modulation interferometer 22 and a radiation source 38 for short-coherent radiation; a measuring probe system 40 connected to the transmitting element and for supplying the radiation via a common optical path (see optical fibers in Figure 3); a receiving element 28 that is connected to processor 42 to which it sends signals for analyzing a measuring radiation returning from the measuring probe system; wherein

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the measuring probe system includes a plurality of measuring probes 12 coupled to the common optical path via respective optical paths 32; and a switching device 30 disposed at a coupling point between the common optical path and the respective optical paths to the measuring probes, wherein the switching device allows the different measuring probes to be individually brought into a bidirectionally transmitting connection with the transmitter and receiver for the radiation supplied by the modulation interferometer, on the one hand, and the measuring radiation, on the other hand (see, for instance, Col. 8, line 61 – Col. 9, line 26).

Balachandran, however, fails to disclose that the transmitting unit and the receiving unit, the transmitting unit comprising the modulation interferometer and the radiation source, are integrated in the same unit.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to integrate the modulation interferometer, the radiation source, and the receiving element of Balachandran into a single transmitting/receiving unit as per the instant claim, the motivation being that integrating parts has been held to be within the realm of one of ordinary skill in the art as a matter of obvious design choice, in addition to the benefits in the instant sense of making the device more compact. *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965).

As for claim 9, Balachandran discloses the use of a single mode fiber (see, for instance, Col. 9, line 32).

As for claims 10-12, Balachandran discloses optical switch 30, which inherently features control elements that, either automatically or manually (claim 10 and 12), switch via electronic

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or other means (claim 11) between one fiber probe and another, by the well known definition of how an optical switch operates.

As for claim 13, each probe 12 forms an individual measurement channel of a probe unit 40.

(10) Response to Argument

Appellant argues that Balachandran et al (hereinafter Balachandran) fails to disclose the invention set forth in instant claim 8, where the claim includes features such as a transmitting element that includes a modulation interferometer and a radiation source for short-coherent radiation, where *the modulation interferometer is combined with the radiation source and a receiving element in a single transmitter/receiver unit*. The examiner agrees with appellant that Balachandran does not disclose the radiation source, the modulation interferometer, and the receiving element to be combined into a single transmitter/receiver unit. However, appellant is silent as to the examiner's contention that, while Balachandran fails to disclose the combination of the radiation source, modulation interferometer, and receiving element into a single unit, it would have been obvious to one having ordinary skill in the art to combine those elements into a single unit.

The examiner contends that it would have been obvious to one having ordinary skill in the art at the time the invention was made to integrate the modulation interferometer, the radiation source, and the receiving element of Balachandran into a single transmitting/receiving unit. The motivation for such an integration is twofold. First, this integration is within the realm of one of ordinary skill in the art as a matter of obvious design choice, as set forth by *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965) (see also MPEP § 2144.04). In

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Larson, the court held, among other reasons, "that the use of a one piece construction instead of the structure disclosed [in the prior art] would be merely a matter of obvious engineering choice". Such integration would simply place the modulation interferometer, the radiation source, and the receiving element within a single element, rather than being three individual and separate elements as set forth in *Balachandran*. This integration occurs without any change to the functionality of the *Balachandran* device. Additionally, such integration would have the obvious benefit of making the *Balachandran* device more compact. The integrated, single element construction of the modulation interferometer, the radiation source, and the receiving element tightly groups three distinct elements that would be spatially separated otherwise.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Michael A. Lyons/
Primary Examiner, Art Unit 2877

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/Gregory J. Toatley, Jr./
Supervisory Patent Examiner, Art Unit 2877

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